Appendix A

Filed Aug 18, 1967

Clerk, U. S. District Court
Central District of California

In the United States District Court
Central District of California

Civil No. 63-1552-F

United States of America,
Plaintiff,

v.

Blue Chip Stamp Company; Alexander's Markets; Lucky Stores, Inc.; Market Basket; Purity Stores, Inc.; Ralphs Grocery Company; Safeway Stores, Incorporated; Thriftimart, Inc.; Thrifty Drug Stores Co., Inc.; and Von's Grocery Co.,
Defendants

Independent California Service Station Operators, plaintiffs in the action of Twyman, et al. v. Blue Chip Stamp Company, et al.,
Petitioners for Intervention

Raley's, a corporation,
Petitioner for Intervention

Thrifty Shoppers Scrip Co.,
Petitioner for Intervention

OPINION DENYING MOTIONS TO INTERVENE AND TO VACATE CONSENT DECREE

On June 5, 1967, the Court approved and signed a consent decree in this antitrust action. Subsequent thereto Petitioners for Intervention filed motions which seek—

(a) to intervene as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure;

(b) to be permitted to intervene under Rule 24(b); and

(c) to vacate the consent decree of June 5, 1967.

At the conclusion of argument on July 31, 1967, the Court orally announced its decision, and by minute order denied the motions. This opinion is written in order to permit a studied examination of the Court's views.

BACKGROUND

On December 26, 1963, the United States filed its complaint alleging that Blue Chip Stamp Company, Thrifty Drug Stores Co., Inc. (the largest pharmacy chain in California) and eight grocery chains (whose 1962 sales constituted 30 percent of all sales of grocery stores in California) had since 1955 engaged in a conspiracy in restraint of trade, and had monopolized the trading stamp business in California, in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2). The complaint sought an injunction against continuation of the activities charged and asked that the defendant retailers be enjoined in the future from using Blue Chip stamps.

After the case was filed, the Government and the defendants engaged in detailed negotiations to settle the litigation by consent decree. These negotiations extended over two years in time, and the Government afforded an opportunity to all defendants and to all other parties expressing an interest in the case to be heard. As a result of these negotiations, three separate consent decrees were proposed, each of which was lodged with this Court. In order that interested parties might have time to study each proposed decree and

to make known their views with respect to it, there was annexed to each decree a stipulation providing that all signatory parties consented to entry of the given decree after 30 days unless the Government withdrew its consent during the 30-day period.

On July 22, 1966, the first proposed decree was lodged with the consent of all parties except defendants Market Basket and Thriftimart. The two non-consenting defendants as well as the State of California, Certified Grocers Association, and California Grocers Association (all non-parties), raised objections to the decree before the 30-day period had expired. The Government then withdrew its consent and the decree was withdrawn.

Following further negotiations, a second decree was drafted and lodged with the Court on October 28, 1966. The annexed stipulation to the decree was signed by the Government and all defendants except Market Basket and Thriftimart. The Government and the consenting defendants filed briefs in support of the decree. The two non-consenting defendants, and the California Grocers Association, Certified Grocers Association, S & H Stamp Company, and the State of California filed briefs in opposition to entry of the decree. On December 13, 14 and 15, 1966, this Court held hearings, and all parties favoring or opposing the decree were given opportunity to be heard. At the conclusion of the hearings, the Court refused to sign the proposed decree and outlined certain requirements it believed essential to any decree settling the case.

On April 28, 1967, a third decree was lodged, consented to by all defendants. The Court ordered notice should be given to all parties previously appearing in the case, including parties *amici curiae*. Argument was set for June 5, 1967. Such notice was given. Briefs in favor of this third pro-

posed decree were filed by the Government, all defendants, and also by the State of California, the California Grocers Association, and Certified Grocers Association, who had been active in opposing the earlier decrees. Briefs *amici curiae* in opposition to the proposed decree were filed by the petitioners herein, by S & H Stamp Company, and by Gold Bond Stamp Company. After a study of the briefs and consideration of the oral arguments, the Court signed and entered the proposed decree on June 5, 1967.

DESCRIPTION OF PETITIONERS

Independent California Service Station Operators are plaintiffs in the case of *Twyman et al. v. Blue Chip Stamp Company et al.*, Civil No. 66-1522-F, now pending before this Court. The complaint therein alleges substantially the same violations as those alleged in the Government complaint (violation of Sections 1 and 2 of the Sherman Act). Likewise, the Government complaint is incorporated in the petition to intervene. The service station operators suing in *Twyman* and seeking to intervene here claim that by virtue of the Blue Chip trading stamp monopoly, a customer demand has been created for trading stamps, so that service station operators must give trading stamps. It is alleged that by being thus forced to give trading stamps and by being forced to obtain said trading stamps from a monopoly, the service station operators are damaged. Their complaint seeks threefold damages under the provisions of 15 U.S.C. § 15.

Thrifty Shoppers Scrip Co. is a stamp company which competes with Blue Chip. It has filed an action in this Court, *Thrifty Shoppers Scrip Co. v. Blue Chip Stamp Co.*, No. 67-596-F, against the same defendants as are here, alleging injury in its efforts to compete in the trading stamp busi-

ness in California due to the restraints of trade and the monopolization by the defendants. Thrifty seeks threefold damages.

Raley's, Inc., a retail grocery chain, also is the plaintiff in a civil action now pending before this Court. A 2% stockholder of Blue Chip, Raley's is suing on behalf of said company and other stockholders. *Raley's et al. v. Alexander's Markets et al.*, Civil No. 64-660-F. Named as defendants are Blue Chip, the other defendants in the Government suit, and certain individual shareholders of Blue Chip Stamp Company. Raley's complaint alleges violation of Sections 1 and 2 of the Sherman Act, and prays for money damages, for a decree requiring the defendants to sell their stock in Blue Chip Stamp Company, and for an injunction prohibiting the defendant shareholders from participating in future profits of Blue Chip. In 1966 Raley's commenced using Gold Bond stamps. From 1959 to 1966 it had used its own stamps; prior to 1959 it had used Blue Chip.

RULE 24

The applicable Rule is Rule 24, Federal Rules of Civil Procedure:

Rule 24. Intervention.

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

QUESTIONS PRESENTED

The questions presented are (1) whether petitioners have a right to intervene [Rule 24(a)], or (2) should be permitted to intervene [Rule 24(b)] in an action brought by the Government and subsequently settled, with the consent of the Court after a full hearing, and, (3) whether, ancillary to this, the petitioners have a right to have the consent decree vacated.

THE PETITIONS WERE NOT TIMELY

Rules 24(a) and 24(b) specifically provide for intervention only upon "timely application". The present motions were neither served nor filed until after June 5, 1967, the date the consent decree was entered. Twyman's motion was filed June 19, 1967; Thrifty Shoppers' on July 12, 1967; and Raley's on July 14, 1967. The rule for intervening after

entry of a final judgment is set forth in Barron & Holtzoff, Fed. Prac. & Proc., vol. 2, ¶ 594:

> "Intervention may be allowed after a final judgment or decree if it is necessary to preserve some right which cannot otherwise be protected, but such intervention will not be permitted unless a strong showing is made."

Petitioners have failed to make any showing at all as to any right which can only be protected by intervention. Furthermore, there is no showing that their applications are "timely".

Each petitioner claims it demonstrated its opposition to the decree by filing an *amicus curiae* brief and by arguing in opposition to its entry. However, if petitioners had time to make known their opposition to the decree, they had time to file their applications to intervene.

In *United States v. Wilhelm Reich Foundation*, 17 F.R.D. 96 (D. Maine 1954), *aff'd*, 221 F.2d 957, *cert. denied*, 350 U.S. 842, the Court stated:

> "Although the determination of timeliness involves a consideration of a number of factors and the time element alone is not controlling, a strong showing must be made by the applicants in order to be allowed to intervene after the entry of a final judgment. See 4 Moore's Federal Practice, 2d Ed., Par. 24.13." 17 F.R.D. at 102.

In *Slusarski v. United States Lines Co.*, 28 F.R.D. 388, 390 (E.D. Pa. 1961), the Court stated: "Where, as here, all issues have been resolved and the litigation concluded, with entry of judgment, we think the application is clearly too late." For similar rulings see *Alleghany Corp. v. Kirby*, 344 F.2d 571 (2d Cir. 1965), appeal dismissed—*cert.* improvidently granted, 384 U.S. 28; *Kaplan v. Guardian Life Ins. Co. of Amer.*, 231 F.Supp. 874, 876-77 (W.D. Mo. 1964);

Union Nat. Bank of Youngstown, Ohio v. Superior Steel Corp., 9 F.R.D. 124 (W.D. Pa. 1949).

Rule 24 fails to provide any standard by which timeliness may be tested. Thus, it is necessary to look to all the circumstances in a given case. However, the courts do not look with favor upon one who, fully aware of what has transpired, nonetheless fails to act on his rights and is unreasonably tardy in filing a petition for intervention. Thus, it has been stated:

> "... we might say we do not see any reason why these interveners could not have sought intervention much earlier. The Court should also consider the state of the cause. That is, as we have pointed out, the case has been concluded; a decree entered; and the parties have reached an amicable settlement and dismissed their appeal. The applicants for intervention here have in effect slept on their rights, and now they want this Court in effect to administer the motion picture industry in the distribution of motion pictures in Western Pennsylvania. We do not feel that this is a function of a district court." *Basle Theatres, Inc. v. Warner Bros. Pictures Distributing Corp.*, 24 F.R.D. 476, 477 (W.D. Pa. 1959).

The requirement of timeliness is not without foundation. The interest in expeditious administration of justice does not permit litigation interminably protracted through continuous reopening. A motion to intervene after entry of the decree should therefore be denied in other than the most unusual circumstances. Such circumstances are not present here. Petitioners have for some time been aware of the existence and nature of the negotiations leading to the final decree entered by this Court. They have been

given every opportunity to be heard. Had they felt their interests were not being given adequate consideration, they should have moved to intervene. They chose not to do so, but rather waited until lengthy and complex negotiations had been completed, all arguments of *amici* in opposition to the three proposed decrees had been heard, and a consent judgment entered, before ultimately seeking to intervene.

Petitioners cite *Kozak v. Wells*, 278 F.2d 104 (8th Cir. 1960), as purported authority for the proposition that intervention is proper after entry of a consent judgment. However, *Kozak* is not applicable here. In that case the motion to intervene came *prior* to entry of the decree and before the issues had been drawn. The opinion did note, however, that "There are even occasions where intervention is proper after judgment." But such cases have typically involved a refusal or unwillingness by the losing party to diligently prosecute the lawsuit, this fact not becoming apparent until after the Court's decision. *E.g.*, *Hurd v. Ill. Bell Tel. Co.*, 234 F.2d 942, 944 (7th Cir. 1956) (intervention granted at appellate level where in a spurious class action it appeared that certain members of the class doubted the faithfulness of the named plaintiff in prosecuting the appeal on behalf of the class); *Pellegrino v. Nesbit*, 203 F.2d 463 (9th Cir. 1953) (intervention granted for purposes of prosecuting appeal by a stockholder who learned after judgment had been entered against the corporation, that the corporation had decided not to appeal, despite the fact that the corporation's suit against its officers to recover allegedly improper profits had been instigated at the request of this stockholder); *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir. 1944), *cert. denied*, 323 U.S. 777 (intervention granted for purposes of prosecuting

appeal because affected property owners did not learn until after judgment that the zoning commission did not intend to appeal an adverse judgment). Under circumstances such as these, where the inadequate representation of the petitioner's interest comes to light only after entry of the decree, the courts have been willing, with good reason, to recognize an exception to the general rule forbidding intervention after entry of the decree. This exception has been narrowly defined: "Intervention may be allowed after a final decree where it is necessary to preserve some right which cannot otherwise be protected." *Wolpe v. Poretsky, supra,* 144 F.2d at 508.

Referring again to *Kozak, supra,* the motion to intervene therein, as noted above, was filed before entry of final judgment. Thus, *Kozak* is not authority excusing petitioners here from the necessity of making a "strong showing" as to why they did not proceed more diligently. The delay in serving and filing the motions cannot be overlooked when considered in light of the injury sure to result to the public should implementation of the decree be postponed.

Petitioners contend they meet the requirement of timeliness since the *El Paso* case [*Cascade Natural Gas Corp. v. El Paso Natural Gas Co.,* 386 U.S. 129 (1967)] holds that even after entry of the consent judgment, intervention may be permitted. Whether or not this is in fact the holding in *El Paso,* it is clear that that case does not rewrite Rule 24(a) and (b) to eliminate the requirement of timeliness. After the Supreme Court ordered divestiture, *United States v. El Paso Natural Gas Co.,* 376 U.S. 651 (1964), the District Court held hearings on the form of relief. Twenty parties, including the State of California and Cascade Natural Gas Corp., filed motions to intervene. These

motions were filed and denied *before* the District Court entered its consent decree. Thus, in the opinion whereby intervention was denied, the District Court stated, "All that remains is to fashion a divestiture decree which complies with the mandate of the Supreme Court." *U.S. v. El Paso Natural Gas Co.*, 37 F.R.D. 330, 332 (D. Utah 1965). Of the 20 prospective intervenors, California, and Cascade Natural Gas Corp., appealed to the Supreme Court, along with Southern California Edison Co., which had petitioned to intervene at a later date. The Supreme Court reversed, permitting intervention. The Court's opinion, per Mr. Justice Douglas, does not even discuss timeliness.

As noted above, California, and Cascade Natural Gas Corp., both sought intervention well in advance of entry of the consent decree. It is not clear when the petition of Southern California Edison Co. was filed. However, on these facts, and in view of the fact that the Supreme Court did not discuss timeliness or the dates the petitions were filed, it is clear that *El Paso* cannot be taken as authority for the proposition that intervention may be permitted after entry of a consent decree.

In *El Paso*, the Supreme Court observed that it had a right to protect and to insure obedience to its own previous mandate. Similarly, this Court likewise has broad powers to protect and interpret decrees which it has approved and issued. Obviously, a ruling by a court that intervention is proper to insure compliance with its earlier mandate is no authority for asserting that a court, which has issued a mandate, should permit intervention for the purpose of attacking the mandate. In this respect, *El Paso* is actually authority for the denial of the instant motions to intervene, because the present Court has power to interpret and enforce the mandate which it has issued.

This interpretation of *El Paso, supra,* has been sustained in the most recent session of the Supreme Court. The Government had prevailed in an action brought to force Alcoa to divest itself of Cupples. *(United States v. Aluminum Company of America,* 233 F. Supp. 718, 247 F. Supp. 308 (E.D. Mo. 1962), *affirmed per curiam,* 382 U.S. 12.). During the pendency of the action, and subsequent negotiations for divorcement, Alcoa and Cupples bid on a contract to supply aluminum curtain walls for the proposed New York Port Authority building, under an agreement that if Alcoa were forced to divest itself of Cupples, it would relinquish the contract to Cupples. Lupton Manufacturing Co. also bid to supply aluminum curtain walls for the building. When the order of divorcement became final, Lupton moved to intervene under Rule 24(a) and (b). Lupton did not contend that it had a right to bid free from competition, but rather asserted that if Cupples were permitted to retain the contract it would retain part of the profit of an illegal merger, and thereby frustrate the purposes of the Government's case, namely, to restore free and open competition in the aluminum curtain wall industry. The District Court denied Lupton's motion to intervene and a direct appeal was taken to the Supreme Court. *United States v. Aluminum Company of America and Cupples Products Corp.,* 41 F.R.D. 342 (E.D. Mo. 1967), appeal to Supreme Court dismissed, 87 S. Ct. (Adv.) 2112 (June 12, 1967).

PETITIONERS HAVE NO RIGHT TO INTERVENE UNDER RULE 24(a)

Rule 24(a) governs intervention as of right. In addition to the requirement of "timely application", 24(a) further requires that a prospective intervenor claim—

". . . an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect his interest. . . ."

Petitioners have not demonstrated the existence of any "interest relating to the property or transaction" which is the subject of the Government's suit which might support their applications to intervene.

Each petitioner has filed an action, pending in this Court, charging the defendants with substantially the same antitrust violations as those charged in the Government's case. They seek damages for the injuries suffered as a result of these violations. None of their "interests" are in any way "impaired or impeded" by settlement of the Government's case. Nor is their ability to prosecute their respective cases impaired or impeded by the Government's case. The speculation that petitioners may be benefited in the trial of their respective cases if the Government is forced to litigate its case certainly does not give them an "interest" in the Government's case sufficient to support the motions to intervene.

If the petitioners are appearing merely as members of the public, in the public interest, then it is incumbent upon them to establish that the Government has not acted properly in the public interest. This they have not done. Congress has vested in the Department of Justice the duty of instituting proceedings in equity to prevent and restrain antitrust violations. (15 U.S.C. § 4.). Acting on behalf of the public interest in the present matter, the Government first investigated, and then filed its complaint seeking to restrain the violations and to dissipate the monopoly revealed by its investigation. Substantial effort was

expended both in preparing the case for trial and in seeking to negotiate the consent decree, here challenged, to attain the two principles for which the case was originally filed. The decree enjoins those trade restraints alleged to be illegal in the complaint, and provides for drastically reducing the power of the defendant retailers over Blue Chip Stamp Company; defendant retailers are enjoined from acting in concert in the trading stamp industry in the future. The monopoly power of Blue Chip is decreased, and competition is opened.

PETITIONERS SHOULD NOT BE PERMITTED TO INTERVENE UNDER RULE 24(b)

Generally speaking, the right to intervene to defeat entry of a consent decree in any government antitrust action has been consistently denied.

In *Sutphen Estates, Inc. v. United States,* 342 U.S. 19 (1951), the facts were that after the decision in *United States v. Paramount Pictures, Inc. et al.,* 334 U.S. 131 (1948), Warner Brothers Pictures Corporation was ordered reorganized in a manner similar to divestiture. Sutphen Estates had leased property to a Warner affiliate and Warner had guaranteed the lessee's performance of the lease. Intervention was sought by the lessor to protect its rights against Warner as guarantor. Intervention was denied because the lessor was not a privy of Warner and the "reorganization" decree would not bind the lessor in any legal sense. The Court stated that ". . . the claim of injury to appellant is too speculative and too contingent on unknown factors to conclude that there was an abuse of discretion in denying leave to intervene". 342 U.S. at 23.

In *Sam Fox Publishing Co. et al. v. United States,* 366 U.S. 683 (1961), the District Court denied certain music

publishers intervention in proceedings for the modification of a prior consent decree in a government antitrust suit. On appeal, the Supreme Court, per Justice Harlan, stated:

> "We regard it as fully settled that a person whose private interests coincide with the public interest in government antitrust litigation is nonetheless not bound by the eventuality of such litigation, and hence may not, as of right, intervene in it. In *United States v. Borden Co.*, 347 U.S. 514, it was ruled that it was an abuse of discretion for the District Court to refuse the Government an injunction against certain acts held violative of the antitrust laws, even though the same acts had already been enjoined in a private suit. It was there stated in clearest terms that 'private and public actions were designed to be cumulative, not mutually exclusive' *(id.,* at 518). . . ." 366 U.S. at 689.

See also, *United States v. Loew's, Inc. et al.*, 20 F.R.D. 423 (S.D. N.Y. 1957).

In *United States of America v. Radio Corporation of America,* 186 F. Supp. 776 (E.D. Pa. 1960), *appeal dismissed,* 364 U.S. 518, a competitor of the defendant attempted to intervene after a consent decree had been entered, for the purpose of objecting to proposed acquisitions to which the Government did not object. The Court denied intervention, as under the consent decree it had retained jurisdiction only to allow any of the parties to the final judgment—no one else—to apply to the Court for further orders or directions. However, the Court also stated:

> "The Government opposes the motion for intervention and has informed the Court that it has carefully investigated and reviewed all the facts and reached the conclusion that the proposed Boston and San Fran-

> cisco acquisitions do not violate the decree. In this state of facts, even if I had discretion to allow the intervention, I would not do so. The Government is concerned with the public interest and is satisfied that the conduct which Westinghouse complains of is not against that interest. It would not lead to an orderly administration of justice to allow intervention in this type of antitrust litigation over the objection of the authorized agency of the United States in charge of enforcing a decree which it has obtained. The movant, if it is aggrieved, must be left to such private remedy as Congress may have provided for it." 186 F. Supp. at 776-777.

This language is particularly significant for the case at bar, where the Government opposes intervention and where the proposed intervenors have already commenced pursuit of private remedies.

PETITIONERS' MOTIONS ARE WITHOUT MERIT

There is no merit to the claims petitioners seek to advance; intervention should thus be denied. In *Marx v. Maddrey,* 106 F. Supp. 535 (E.D. N.C. 1952), petitioner moved to intervene and to set aside an order previously entered. The Court denied intervention on the ground that the arguments raised in opposition to the order were without merit.

Petitioners here do nothing more than reiterate arguments previously presented; they fail to raise any additional arguments not already heard at length and denied by this Court. To permit intervention and vacation of the decree so that these very same arguments can be heard again would impose an unwarranted burden on the parties and the Court.

In support of their contention that their claims should be heard, petitioners cite *United States v. Grinnell*, 384 U.S. 563 (1966), for the proposition that complete destruction of the monopoly power is the standard of relief in monopolization cases. However, the reliance on *Grinnell* is misplaced. Unlike the case at bar, *Grinnell* was litigated to judgment; there was no consent decree. The authorities do not require complete divestiture where a consent decree, rather than a litigated judgment, is entered. The decree herein is designed to limit the powers of Blue Chip and to open up and increase competition in the stamp industry in California, while at the same time preserving the legitimate interests of the users of Blue Chip stamps. This is consistent with the principles embodied in the antitrust laws.

The consent judgment is indispensable to antitrust enforcement. The Government notes that seventy percent of their antitrust judgments are consent decrees. Such decrees result from negotiation, thus typically may provide something less than the full relief prayed for (and often something more than that which the Government could obtain after trial). Litigation that might proceed for many years is avoided by utilization of this procedure. Its legality is beyond question. In *Sam Fox Publishing Co., supra,* the Supreme Court observed that:

> "Apart from anything else, strong policy would strongly lead us to decline appellant's invitation to assess the wisdom of the Government's judgment in negotiating and accepting the 1960 consent decree, at least in the absence of any claim of bad faith or malfeasance on the part of the Government in so acting." 366 U.S. at 689.

As petitioners have not furnished the Court with anything beyond that which has already been carefully considered and rejected upon ordering entry of the consent decree, there is nothing to be gained and much to be lost by vacating the decree.

Petitioners, when asked by the Court to present in substance a decree which would better serve the public were unable to do so. Their arguments are general and without economic substance. This Court has determined that it is essential that there be a viable non-franchised stamp company which can compete with the strong franchised ones, in order to permit small retail businesses in California to compete with large chain establishments. At the present time there is only one non-franchised stamp company in California, Blue Chip. The decree, among other matters, provides that one-half of Blue Chip's Southern California business must be sold to a purchaser who will operate on a nonfranchised basis. This is the most practical way to increase competition in the retail trading stamp business that has been advanced in 3½ years, and petitioners' arguments against the decree are so shallow as to be devoid of merit.

Dated this 18th day of August, 1967.

/s/ WARREN J. FERGUSON
Warren J. Ferguson
United States District Judge

Appendix B

Filed Aug 3 1967
Clerk, U.S. District Court
Central District of California

United States District Court
Central District of California

United States of America,
Plaintiff,

v.

Blue Chip Stamp Company; Alexander's Markets; Lucky Stores, Inc.; Market Basket; Purity Stores, Inc.; Ralphs Grocery Company; Safeway Stores, Incorporated; Thriftimart, Inc.; Thrifty Drug Stores Co., Inc.; and Von's Grocery Co.,
Defendants

Civil No. 63-1552-F

ORDER DENYING MOTIONS

WHEREAS, on October 28, 1966, the Government and all but two defendants lodged a proposed decree settling the above action as to said parties and the proposed decree was set for argument December 13, 1966; and

WHEREAS, said hearing received wide publicity and numerous parties filed briefs *amici curiae* opposing the proposed decree or made appearances at the argument and argued in opposition to said decree; and

WHEREAS, on December 13, 14 and 15, 1966, argument by all parties and by numerous *amici curiae* was heard by the Court, which thereon determined not to enter the proposed decree and outlined certain principles to be considered in any decree settling the case; and

WHEREAS, on April 28, 1967 a proposed consent decree was lodged settling the case as to all parties and the matter was set down for argument June 5, 1967, with notice being given all persons shown by the record as having appeared as *amici curiae* in said case; and

WHEREAS, numerous persons filed briefs *amici curiae* in opposition to said proposed consent decree, including Thrifty Shoppers Scrip Co. and Independent California Service Station Operators; and

WHEREAS, on June 5, 1967 numerous persons appeared in opposition and made oral argument in opposition to said proposed decree, including the two persons just named and Raley's, Inc., who at that time presented both written and oral argument, following which said proposed final judgment was duly signed and entered; and

WHEREAS, the persons listed below served the motions indicated relative to said judgment:

(i) On June 15, 1967, the Independent California Service Station Operators served a motion to intervene under Rule 24 of the Federal Rules of Civil Procedure and a motion to vacate said judgment;

(ii) On July 14, 1967, the Independent California Service Station Operators served a motion under Rule 15(a) of the Federal Rules of Civil Procedure to substitute an amended complaint in intervention for the complaint in intervention previously served and filed by it;

(iii) On July 7, 1967, Thrifty Shoppers Scrip Co. served a motion to intervene under Rule 24 of the Federal Rules of Civil Procedure and a motion to vacate said judgment; and

(iv) On July 14, 1967 Raley's Inc. served a motion to intervene under Rule 24 of the Federal Rules of Civil Procedure; and

WHEREAS, notice having been duly given, memoranda of authorities having been submitted by said movants in favor of their motions and by all parties to said judgment in opposition to said motions, and the matter having come on to be heard on July 31, 1967 and oral argument being heard and considered;

IT IS HEREBY ORDERED that all said motions be denied for the following reasons among others:

Said motions were not made upon timely application;

No sufficient interest in the subject matter of said judgment has been established by any of said movants;

All interests of each of said movants are included within these public interests which have been considered and safeguarded by the action of the Government herein;

Each movant has failed to establish any valid reason why said judgment should be altered; and

To grant any said motion would unduly delay and prejudice the rights of the parties hereto.

Dated: August 3, 1967.

WARREN J. FERGUSON
United States District Judge

Approved as to form:
O'Melveny & Myers
By WILLIAM W. ALSUP
Attorneys for Blue Chip Stamp Company;
Alexander's Markets; Lucks Stores, Inc.;
Market Basket; Purity Stores, Inc.;
Ralphs Grocery Company; Safeway Stores,
Incorporated; Thrift-mart, Inc.;
Thrifty Drug Stores Co., Inc.; and
Von's Grocery Co.

Appendix C

Lodged—Apr 28 1967
Clerk, U. S. District Court
Central District of California

Filed Jun 5, 1967
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Central District of California

United States District Court
Central District of California

Civil No. 63-1552-F

United States of America,
Plaintiff,

v.

Blue Chip Stamp Company; Alexander's Markets; Lucky Stores, Inc.; Market Basket; Purity Stores, Inc.; Ralphs Grocery Company; Safeway Stores, Incorporated; Thriftimart, Inc.; Thrifty Drug Stores Co., Inc.; and Von's Grocery Co.,
Defendants

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint in the United States District Court for the Southern District of California, Central Division, on December 26, 1963; each of the defendants having appeared and filed its answer denying the substantive allegations thereof; and the plaintiff and the defendants, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue

of fact or law herein, without the taking of any evidence, and without this Final Judgment constituting any evidence or admission by any party in respect to any issue of fact or law herein;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states claims for relief against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraint and monopolies," commonly known as the Sherman Act.

II.

For the purposes of this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity;

(B) "Trading stamp business" shall mean the distribution for compensation, of trading stamps to any person for issuance to its customers, employees or others, and the redemption of said stamps for merchandise or money;

(C) "Trading stamp company" shall mean a person engaged in the trading stamp business;

(D) "Capital Assets" shall mean land, buildings, leasehold improvements, furniture and fixtures, warehouse equipment, delivery equipment and automobiles.

(E) "Southern California" is that part of California south of the line formed by the northern boundaries of San Luis Obispo, Kern and San Bernardino Counties.

(F) "New Blue Chip" shall mean a purchaser of, or any other successor to, Blue Chip's trading stamp business pursuant to Section VI herein or a reorganized company pursuant to Sections V or VII herein.

(G) "Reorganization" shall mean a reconstitution of the stock structure of Blue Chip and shall include the creation of a new company to which the assets and liabilities of Blue Chip are transferred, or into which Blue Chip is consolidated or merged.

III.

The provisions of this Final Judgment applicable to any defendant and any person agreeing to be bound shall also apply to each of its subsidiaries, successors, assigns, officers, directors; and employees, and to all other persons in active concert or participation with such defendant or persons who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between or among such defendant or person and its officers, directors, employees, parent company, subsidiaries and affiliates, or any of them.

IV.

Each of the retailer defendants is enjoined and restrained from:

(A) Combining or conspiring to restrain trade in, or monopolizing or attempting to monopolize the trading stamp business in the State of California; or carrying out, directly or indirectly, any such combination, conspiracy, attempt to monopolize or monopolization;

(B) Entering into any contract, agreement or understanding with any other user of trading stamps in the same line of business:

(i) To refrain, in the State of California or in particular areas thereof, from using trading stamp services entirely or from using the trading stamp services of any particular person or persons; or

(ii) To limit the rate of issue employed in distributing trading stamps to their respective customers in such state;

(C) Acting jointly with any other user of trading stamp services in the same line of business to organize or acquire a trading stamp company to operate in the State of California except as provided in Sections V, VI or VII hereof.

Provided, that this Section IV shall not apply to a retailer defendant, acting independently: (i) in obtaining or entering into any contract to obtain trading stamp services from any trading stamp company; or (ii) when such defendant is engaged in the trading stamp business (either directly or through a subsidiary or affiliate), in furnishing or entering into any contract to furnish trading stamp services to any person, and provided further that this Section IV shall not apply to the provision of trading stamp services by any trading stamp company which is not named as a defendant herein.

V.

Blue Chip is ordered and directed to present to the Court, within 60 days following the date of entry of this Final Judgment, a plan for the reorganization of Blue Chip Stamp Company. The plan shall be substantially in accordance with either of the plans heretofore furnished

to plaintiff. Upon approval of the plan by the Court, Blue Chip shall make bona fide and diligent efforts to reorganize the company pursuant to the said plan. If at any time, in plaintiff's judgment, such efforts are not being made, plaintiff may apply to the Court for an order directing that this Section V shall no longer apply. In the event that such order issues, Blue Chip shall be required to divest pursuant to Section VI or to reorganize pursuant to Section VII hereof.

VI.

(A) In the event that Section V becomes inapplicable Blue Chip is ordered and directed to divest, with all due diligence, within 15 months from the date upon which Section V shall no longer apply, all of the company's capital assets, goodwill, and the right to the service mark and to the use of the name "Blue Chip," and, following such divestiture, to discontinue issuance of trading stamps, cease doing business as an operating company and thereafter to wind up its affairs and dissolve consistent with the applicable laws of the State of California. The divestiture shall be made upon the following terms and conditions:

(1) The purchaser or successor to Blue Chip's trading stamp business shall agree to enter its appearance in this proceeding and shall furnish its written consent to be bound by the applicable provisions of this Final Judgment.

(2) The purchaser or successor shall agree to engage in the trading stamp business in California for a reasonable period of time.

(3) The purchaser or successor shall contract with Blue Chip on mutually satisfactory terms for the redemption of all outstanding trading stamps thereto-

fore issued by Blue Chip and said contract shall insure discharge of Blue Chip's redemption obligations and shall require the purchaser or successor to redeem its stamps interchangeably with the trading stamps theretofore issued by Blue Chip.

(4) The purchaser or successor shall assume such other obligations as Blue Chip and it may agree and Blue Chip shall transfer such cash, securities or other assets as it and Blue Chip may agree.

The said divestiture may be made by a sale of assets, a sale of stock of a corporation which controls the assets, or in any other manner not otherwise inconsistent with the terms of this decree. Provided, that in the event that all of the stockholders of Blue Chip dispose of their stock to a purchaser or successor said disposal shall be regarded as a divestiture by Blue Chip for the purposes of this Final Judgment.

(B) Blue Chip shall make known the availability of the assets for sale. Blue Chip shall furnish to bona fide prospective purchasers making inquiry to it, such information as is reasonably necessary for them to proceed with negotiations looking toward the ultimate acquisition of the assets to be divested and shall furnish plaintiff concurrently with the name of any such prospective purchaser. Blue Chip shall render quarterly reports to the Assistant Attorney General in charge of the Antitrust Division concerning its efforts to effectuate the divestiture required, the first such report to be rendered within 30 days of the date that Section V shall no longer apply.

(C) At least 30 days in advance of the closing date specified in any contract for sale, Blue Chip shall supply plaintiff with the name of the proposed purchaser, the purchase contract, and with such other information in its

possession as is material to the proposed sale. If plaintiff requests, the said closing date shall be extended to the extent necessary to afford plaintiff 60 days between the date of the receipt of the said information and the closing date. Blue Chip may close any sale unless plaintiff serves upon Blue Chip, at least 15 days in advance of the closing date, written notice that plaintiff objects thereto. If plaintiff serves such written notice with respect to a sale to a purchaser engaged in the trading stamp business, or a purchaser engaged in the operation of retail food stores in the State of California, such sale shall not be closed. If plaintiff serves such written notice with respect to any other sale, the sale shall not be closed unless approved by the Court. The time period set forth in Section VI(A) above shall be tolled during the pendency of any extension or of any proceeding under this Section VI(C).

(D). The divestiture ordered and directed by Section VI(A) of this Final Judgement shall be made in good faith and shall be absolute and unqualified except as follows:

(1) Nothing herein contained shall be deemed to prohibit Blue Chip from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or any other form of security reasonably necessary to secure full payment of the price at which the divested property is disposed of or sold or to secure any other obligation of a purchaser or successor, provided that if Blue Chip shall regain ownership of or control over the property divested as a result of any lien, mortgage, deed of trust, or other undertaking, Blue Chip shall be required to terminate such ownership or control within 18 months thereafter.

(2) In the event that Blue Chip receives, as a result of any divestiture hereunder, stock of a corporation which controls the divested assets:

(a) Blue Chip shall be required: (i) to dispose of any amount of such stock in excess of 10% of the outstanding common stock of such corporation within one year following the date of receipt thereof or within 22 months following the date Section V shall no longer apply, whichever is earlier, provided that in no event shall such disposal be required within less than three months following the date of receipt of such excess; and (ii) to dispose of the balance of such stock no later than the date of final distribution in liquidation; and (iii) pending disposal, to cause any voting rights of such stock to be exercised by a financial institution or other third party who is acceptable to plaintiff or approved by the Court; and

(b) In the event Blue Chip distributes such stock to its shareholders, no distribution shall be made pursuant to which any Blue Chip shareholder will retain more than 1% of the outstanding common stock of the said corporation unless the plan of distribution is acceptable to plaintiff or approved by the Court.

VII.

In the event that Section V becomes inapplicable, Blue Chip may also enter into a reorganization pursuant to a plan for the reorganization of Blue Chip Stamp Company acceptable to the Court. The plan shall be substantially in accordance with either of the plans heretofore furnished to plaintiff or in accordance with any other plan acceptable to Blue Chip and to plaintiff.

VIII.

(A) Blue Chip is ordered and directed to continue its trading stamp business and to continue to promote its trad-

ing stamp service until completion of the reorganization set forth in Sections V or VII above or until the divestiture set forth in Section VI above. Until such reorganization or divestiture Blue Chip is enjoined and restrained from:

(1) Refusing to provide a trading stamp service or imposing any limitation on such service to any person because of: (i) the presence in the same locality of any establishment operated by another person using Blue Chip's stamp service; (ii) the rate of issue employed by such person in offering Blue Chip's or any other person's stamps; or (iii) the use by such person of any other trading stamp service;

(2) Coercing or compelling any person: (i) to limit the rate of issue employed in offering Blue Chip's or any other person's stamps; or (ii) to refrain from using any other trading stamp service.

(B) New Blue Chip, in the event that it is not already a party hereto, shall enter its appearance in this proceeding and give its consent to be bound by the applicable provisions of this Final Judgment. A purchaser of assets pursuant to Section IX hereof shall enter its appearance in this proceeding and give its consent to be bound by the applicable provisions of this Final Judgment. New Blue Chip and such purchaser are enjoined and restrained from:

(1) Refusing to provide a trading stamp service or imposing any limitation on such service to any person because of: (i) the presence in the same locality of any establishment operated by another person using the company's stamp service; (ii) the rate of issue employed by such person in offering the company's or any other person's stamps; or (iii) the use by such person of any other trading stamp service;

(2) Coercing or compelling any person (i) to limit the rate of issue employed in offering the company's

or any other person's stamps; or (ii) to refrain from using any other trading stamp service;

(3) Having as an officer or employee any person who, while holding such position, also serves as an officer, director, or employee of any person using trading stamp services; or from having, for a period of ten years following the date of entry of this Final Judgment, as a director, any person who, while holding such position, also serves as an officer, director or employee of any person who was a Blue Chip stockholder in 1956 or 1957.

(C) Each of the retailer defendants is enjoined and restrained for a period of ten years following the date of entry of this Final Judgment:

(1) From having as an officer, director, or employee any person who, while holding such position, also serves as an officer, director or employee of New Blue Chip; or

(2) From exercising any right which it might acquire to vote for the election of any official of New Blue Chip; *provided* that a retailer defendant may cause such right to be exercised independently by a financial institution or other third party acceptable to plaintiff or approved by the Court.

Each retailer defendant shall be free to utilize or not utilize the trading stamp services of Blue Chip and New Blue Chip and, except as provided in this Section VIII(C), to exercise the same rights and privileges available to every other user of the stamp services of Blue Chip or New Blue Chip.

IX.

New Blue Chip shall, within 30 months after the date of completion of the reorganization under Sections V or VII above or the divestiture under Section VI above present

for the approval of the Court a plan which shall include the following terms:

(1) New Blue Chip shall offer for sale one-third of its then existing trading stamp business in the State of California. The business to be offered for sale shall be located within a contiguous geographic area within Southern California.

(2) A purchaser shall be permitted to acquire the business only upon the condition that it enter its appearance in this proceeding and agree: (i) to be bound by the applicable provisions of Sections VIII(B), IX, X and XI of this Final Judgment and (ii) to engage in the trading stamp business for a reasonable period of time. A purchaser shall have the right, if it so elects, to redeem New Blue Chip trading stamps within the contiguous area for the period of one year following the consummation of the sale. Plaintiff shall have the right to object to a purchaser in the same manner as it may object to a purchaser under Section VI(C) above.

(3) New Blue Chip shall not, during the period of one year following the consummation of the sale: (i) knowingly allow any person operating retail establishments in the contiguous area to issue New Blue Chip stamps to customers of such establishments; or (ii) furnish New Blue Chip stamps to any person with knowledge that the stamps will be issued to customers at any retail establishment in the contiguous area; or (iii) otherwise engage in the trading stamp business in the contiguous area except that, if the purchaser does not elect to redeem New Blue Chip stamps or if the purchaser fails to perform in accordance with his redemption obligations, New Blue Chip shall have the right to redeem its outstanding stamps in said area.

Following the said one year period, New Blue Chip shall offer its trading stamp service in the contiguous area.

X.

For the purpose of securing compliance with this Judgment and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any defendant, New Blue Chip, or any purchaser under Section IX hereof, made to its principal office, and subject to any legally recognized privilege, be permitted:

(1) Access during the office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of any person specified in this Section X(A) related to any matters contained in this Judgment;

(2) Subject to the reasonable convenience of, and without restraint or interference from, any person specified in this Section X(A), to interview officers or employees of any such person who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, any defendant, New Blue Chip or a purchaser under Section IX shall submit such additional reports in writing with respect to the matters contained in this Final Judgment as may be requested. Provided that no information obtained by the means provided for in this Section X shall

be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for construction, carrying out, modification, termination or enforcement of or compliance with the provisions of this Final Judgment and for the punishment of violations thereof.

Dated: June 5, 1967

/s/ WARREN J. FERGUSON
United States District Judge

Lodged—Apr 28 1967
Clerk, U. S. District Court
Central District of California

United States District Court
Central District of California

Civil No. 63-1552-F

United States of America, *Plaintiff*,

v.

Blue Chip Stamp Company; Alexander's Markets; Lucky Stores, Inc.; Market Basket; Purity Stores, Inc.; Ralphs Grocery Company; Safeway Stores, Incorporated; Thriftimart, Inc.; Thrifty Drug Stores Co., Inc.; and Von's Grocery Co., *Defendants*

COPY OF OUTLINES OF ALTERNATIVE REORGANIZATION PLANS AND COPY OF LETTERS WITH RESPECT THERETO TO BE LODGED WITH PROPOSED FINAL JUDGMENT

In the negotiations between plaintiff and defendants for a consent decree, alternative plans for a possible reorganization of Blue Chip Stamp Company were discussed and, as noted in Section V of the proposed Final Judgment lodged this date, outlines of such plans were furnished to plaintiff. Copies of such outlines are attached hereto with numbers and dollar amounts of the proposed shares of stock and debentures left blank for the reasons stated in the attached letter to the Director of Operations, Antitrust Division, Department of Justice.

Also attached is a copy of a letter dated April 19, 1967 from the attorney for Blue Chip Stamp Company to the Director of Operations, Antitrust Division, Department of Justice, with respect to operations of the company reorganized or organized pursuant to either of said plans "A" or "B".

Dated: April 28, 1967.

For the Plaintiff:

Donald F. Turner
Assistant Attorney General

Gordon B. Spivack
Stanley E. Disney

Lawrence W. Somerville
Attorneys, Department of Justice

For the Defendants:
O'Melveny & Myers
William W. Alsup
Allyn O. Kreps
and
Wilmer, Cutler & Pickering
Arnold M. Lerman

By William W. Alsup
By Arnold M. Lerman
Attorneys for Defendant Blue Chip Stamp Company

O'Melveny & Myers
William W. Alsup
Allyn O. Kreps

By William W. Alsup
Attorneys for Defendants Von's

Gorcery Co., Alexander's Markets, Ralphs Grocery Company, and Thrifty Drug Stores Co. Inc.
DONAHUE, RICHARDS & GALLAGHER
JOSEPH A. WOODS, JR.
and
O'MELVENY & MYERS
WILLIAM W. ALSUP
ALLYN O. KREPS

By Joseph A. Woods, Jr.
Attorneys for Defendant Lucky Stores, Inc.

PILLSBURY, MADISON & SUTRO
WILLIAM E. MUSSMAN
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and
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WILLIAM W. ALSUP
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By David T. Steffen
Attorneys for Defendant Safeway Stores, Incorporated

THELEN, MARRIN, JOHNSON & BRIDGES
GORDON JOHNSON
CHESTER H. BRANDON

By Chester H. Brandon
Attorneys for Defendant Purity Stores, Inc.

McCutchen, Black, Verleger & Shea
G. Richard Doty

By G. Richard Doty
Attorneys for Defendant Market Basket

Tinning & DeLap
James E. Cox
and
William J. Currer, Jr.

By James E. Cox
Attorneys for Defendant Thriftimart, Inc.

REORGANIZATION PLAN "A" FOR BLUE CHIP STAMP COMPANY

1. Amend by-laws, if necessary, to eliminate any restriction on transferability of shares.

2. Amend Articles of Incorporation to change authorized capital to number of common shares, $1.00 par value, necessary to effect the reorganization described below.

3. Subject to Permit of Commissioner of Corporations of the State of California and to a Registration Statement becoming effective under the Securities Act of 1933:

(a) Reclassify present outstanding Class A and Class B shares into ..... common shares.

(b) Offer to sell, in units of one common share and one $..... ten-year debenture (hereinafter described), an aggregate of ..... units as follows:

(i) ..... units to users since March 1, 1964, of Blue Chip Stamp Company's trading stamp services (other than holders of Class A or Class B shares) at a price of $..... per unit, the right of users to subscribe to be substantially in proportion to annual stamp pad patronage; provided that all such users would have the right to undersubscribe or oversubscribe, subject to allocation in the event of oversubscription.

(ii) ..... units to the public through a firm underwriting at not less than $..... per unit plus underwriting commission. In addition, the underwriter will undertake to underwrite the sale of all units not purchased in the offering under paragraph 3(b)(i).

(c) Offer to sell to the management of Blue Chip Stamp Company ..... common shares at $1.00 per share and reserve for future issuance, to manage-

ment of Blue Chip Stamp Company ..... common shares under a stock option plan at a price related to market value so that the available management shares will total ..... shares.

Thus the percentages of stock eventually will be 45% to present shareholders, 45% to users and the public, 10% to management.

4. The $.....2..... debentures shall:

(a) Be subordinated to claims or causes of action, including, without limitation, claims under the antitrust laws, against Blue Chip and its past and present officers, directors and stockholders relating to Blue Chip operations prior to the date the consent judgment becomes final and not subject to appeal, or arising from the reorganization.

(b) Bear interest at 6% (or at ½% above prime rate, whichever is higher) payable quarterly.

(c) Subject to 4(a) above, be payable ten years after date of issuance, be subject to prepayment in whole or in part six years after date of issuance, and, commencing six years after date of issuance, be subject to the annual retirement of one-fifth of the total amount of the debentures by purchase or redemption through the operation of a sinking fund.

5. For a period of ten years, none of the retailer defendants shall be eligible, directly or indirectly, to acquire any additional common shares.

6. Upon completion of the reorganization and the exchange of shares contemplated under paragraph 3(a):

(a) Each of the retailer defendants receiving any of the ..... common shares to be issued in said exchange shall deposit for a ten-year period the cer-

tificates representing such shares in separate trusts with full voting power vested in separate trustees satisfactory to plaintiff or the Court. Each owner of such common shares shall have the right to sell or otherwise dispose of and transfer any or all of the shares deposited by it in trust and in the event of such sale or disposition the certificates representing the shares sold shall be released from the trust with full voting rights vested in the new owner of such shares, provided such release from the trust shall not occur if the sale or disposition is to an officer, director or a shareholder holding more than 5% of the outstanding stock of any retailer defendant.

(b) The directors of Blue Chip Stamp Company, other than Donald A. Koeppel, shall resign as such directors and shall be replaced by Messrs.

....., ...,
....., ...,
....., ...,
....., ...,
and .....

7. Purchasers of the units under paragraph 3(b) shall be free to transfer either debentures or common shares, independent of the transfer of the other.

8. There shall be no requirement that a user of the trading stamp services of Blue Chip Stamp Company be a stockholder, or that a stockholder be a user.

9. There shall be appropriate provisions to prevent dissipation of, and to maintain liquidity of, present and future assets.

10. The reorganized company shall be obligated to engage in the trading stamp business in California for a reasonable period of time.

REORGANIZATION PLAN "B" FOR BLUE CHIP STAMP COMPANY

1. A new California corporation will be organized with a capital structure of one class of common stock sufficient to accomplish the distribution of the amount of stock contemplated in Reorganization Plan "A". A nominal number of shares will be initially issued to present Blue Chip Stamp Company for cash.

2. Present Blue Chip will be merged into the new corporation in accordance with California law and pursuant to an agreement of merger which will provide that:

(a) The name of the new corporation as the surviving corporation of the merger will be Blue Chip Stamp Company or another name using "Blue Chip."

(b) Subject to Permit of the Commissioner of Corporations of the State of California and to a Registration Statement for the new corporation becoming effective under the Securities Act of 1933, the new corporation will issue its stock and debentures to present Blue Chip stockholders,* non-stockholder users and the public, and to management in the amounts contemplated in Reorganization Plan "A".

(c) The debentures to be issued shall be issued in accordance with the description in paragraph 4 of Reorganization Plan "A".

(d) The new corporation will, expressly and by operation of law under the California statutes gov-

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*Present stockholders of Blue Chip under California law will have a right to dissent from the merger and to receive the fair market value of their stock in lieu of stock of the new corporation. To the extent, if any, that this election is exercised, it would reduce the number of shares of the new company to be issued to present Blue Chip shareholders.

erning statutory mergers, acquire all the assets and, in consideration for such transfer of assets, assume all liabilities of the present company arising out of its operations prior to the date the Consent Judgment becomes final and not subject to appeal, including, without limitation, those existing by virtue of antitrust claims asserted against the present company, its past and present officers, directors and stockholders, and liabilities of the present company, its officers, directors and stockholders arising from the reorganization.

(e) The rights, restrictions and provisions set forth in paragraphs 5 through 10 of Reorganization Plan "A" shall be applicable to the new corporation.

Law Offices of

O'MELVENY & MYERS [Letterhead]

433 South Spring Street — Los Angeles, California 90013
Telephone 620-1120 — Cable Address "MOMS"

April 19, 1967

Re: *United States v. Blue Chip Stamp Company*

Dear Mr. Spivack:

You asked that we confirm the statement to you that it is contemplated that the Blue Chip Stamp Company reorganized or organized pursuant to Plan "A" or "B" will operate for profit for the benefit of its stockholders and not as a cooperative. This is to confirm that statement and to advise you that the registration statement pursuant to which the stock and debentures of the reorganized or newly organized corporation will be issued will explicitly

state it is not intended that profits of the corporation will be rebated to users.

Very truly yours,

William W. Alsup

Gordon B. Spivack, Esq.
Director of Field Operations
Antitrust Division
Department of Justice
Washington, D. C.

Law Offices of

O'MELVENY & MYERS [Letterhead]

433 South Spring Street — Los Angeles, California 90013
Telephone 620-1120 — Cable Address "MOMS"

April 27th, 1967

Gordon B. Spivack, Esq.
Director of Field Operations
Antitrust Division
Department of Justice
Washington, D. C. 20530

Re *United States v. Blue Chip Stamp Company, et al.*

Dear Mr. Spivack:

In our negotiations with you and your staff for a consent decree in the above matter we submitted alternative outlines of plans of reorganization "A" and "B" which had been approved by defendants, the Assistant Attorney General of California and the attorney for Certified Grocers and California Grocers Association.

We do not desire to file as a public document copies of said plans "A" or "B" which specify numbers, dollar amounts or price of the stock and debentures as this

might cause problems for the Company with the California Corporations Commissioner and the Securities and Exchange Commission. Moreover, it is possible that the numbers of shares of the common stock will be increased and the face amount of the debentures will be reduced so as to achieve a wider subscription and to increase the likelihood of alienability of the securities. For these reasons you have agreed with us that the copies of plans "A" and "B" to be lodged with the Court shall not disclose numbers or dollar amounts.

This letter is to assure you that no change will be made in the numbers of or face amounts of the securities which would have the effect of increasing the cost of the common stock to be issued, or of reducing the number of shares thereof to be issued, or of increasing the face amount of the debentures.

It is understood, of course, that in response to questions, requests or otherwise you may feel called upon to, and you are entirely free in your discretion to, disclose the numbers and dollar amounts which are set forth in plans "A" and "B" heretofore submitted to you.

Sincerely yours,

/s/ William W. Alsup

William W. Alsup

WWA:MPE

Appendix D

Final Judgment Lodged with Court on October 28, 1966

United States District Court
Central District of California

Civil No. 63-1552-IH
First Decree

United States of America,
Plaintiff,

vs.

Blue Chip Stamp Company, Alexander's Markets; Lucky Stores, Inc.; Market Basket; Purity Stores, Inc.; Ralphs Grocery Company; Safeway Stores, Incorporated; Thriftimart, Inc.; Thrifty Drug Stores Co., Inc.; and Von's Grocery Co.,
Defendants.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint in the United States District Court for the Southern District of California, Central Division, on December 26, 1963; each of the defendants having appeared and filed its answer denying the substantive allegations thereof; and the plaintiff and the consenting defendants, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, without the taking of any evidence, and without this Final Judgment constituting any evidence or admission by any party in respect to any issue of fact or law herein;

Now, THEREFORE, It is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraint and monopolies," commonly known as the Sherman Act.

II.

For the purposes of this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity;

(B) "Trading stamp business" shall mean the distribution, for compensation, of trading stamps to any person for issuance to its customers, employees or others, and the redemption of said stamps for merchandise or money;

(C) "Trading Stamp Company" shall mean a person engaged in the trading stamp business;

(D) "Closing date" shall mean March 1, 1969;

(E) "Test period" shall mean the period between the date of entry of this Final Judgment and June 30, 1970.

III.

The provisions of this Final Judgment applicable to any defendant consenting and any person agreeing to be bound shall also apply to each of its subsidiaries, successors, assigns, officers, directors, and employees, and to all other persons in active concert or participation with such defendant or persons who shall have received actual notice

of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between or among such defendant or person and its officers, directors, employees, parent company, subsidiaries and affiliates, or any of them.

IV.

Each of the consenting retailer defendants is enjoined and restrained from:

(A) Combining or conspiring to restrain trade in, or monopolizing or attempting to monopolize the trading stamp business in the State of California; or carrying out, directly or indirectly, any such combination, conspiracy, attempt to monopolize or monopolization;

(B) Entering into any contract, agreement or understanding with any other user of trading stamps in the same line of business:

(i) To refrain, in the State of California or in particular areas thereof, from using trading stamp services entirely or from using the trading stamp services of any particular person or persons; or

(ii) To limit the rate of issue employed in distributing trading stamps to their respective customers in such state;

(C) Acting jointly with any other user of trading stamp services in the same line of business to organize or acquire a trading stamp company to operate in the State of California;

Provided, that this Section IV shall not apply to a consenting retailer defendant, acting independently: (i) in obtaining or entering into any contract to obtain trading stamp services from any trading stamp company; or (ii) when such defendant is engaged in the trading stamp business

(either directly or through a subsidiary or affiliate), in furnishing or entering into any contract to furnish trading stamp services to any person, and provided further that this Section IV shall not apply to the provision of trading stamp services by any trading stamp company which is neither named as a defendant herein nor organized pursuant to the terms of this Final Judgment.

V.

(A) Blue Chip is ordered and directed to cause the creation of a new trading stamp company (hereinafter called "New Company") in accordance with Articles of Incorporation which have heretofore been furnished to plaintiff, or in accordance with any other Articles of Incorporation not inconsistent with the terms of this Final Judgment which Articles will provide for operation as a non-profit company or will be acceptable to the plaintiff, and to prepare and require New Company to engage in the trading stamp business in California and Nevada by the closing date. The preparation required shall include:

1. Commencing March 1, 1968 and until March 1, 1969, Blue Chip shall allow Directors of New Company to attend meetings of the Blue Chip Board of Directors.

2. Blue Chip and New Company shall enter into a contract on mutually satisfactory terms whereby beginning by the closing date, New Company shall redeem (on reasonable redemption terms satisfactory to Blue Chip) outstanding trading stamps issued by Blue Chip and shall maintain sufficient goods, personnel and facilities to carry out such redemption, with Blue Chip to compensate New Company for the goods delivered or cash paid in redemption and for services rendered;

3. By the closing date, Blue Chip shall transfer to New Company such tangible and intangible assets as may be appropriate for New Company to operate Blue Chip's trading stamp business on an economically viable basis; provided, however, that Blue Chip shall not be required to transfer any cash, securities or other liquid assets except to lend to New Company up to such amount, not exceeding $1,500,000.00, as may be required to provide New Company with reasonable working capital necessary for its operations for six months following the closing date.

4. Blue Chip shall furnish the plaintiff and New Company a schedule listing by category the proposed assets to be transferred to New Company. For a period of sixty days thereafter plaintiff and New Company may apply to this Court for a determination of whether the proposed transfer complies with Subsection 3 above and, in the event such application is filed, the said transfer shall not become effective except as approved by this Court;

(B) Blue Chip is ordered to cause New Company to enter its appearance in this proceeding and its written consent to be bound by the applicable provisions of this Final Judgment. New Company shall:

1. Reimburse Blue Chip for the out-of-pocket expenses directly incurred by Blue Chip in establishing New Company and transferring property to it;

2. Accept and pay for, on mutually satisfactory terms (including provisions for the discharge of continuing obligations from the date of transfer forward) the assets, including any cash amount, transferred to it by Blue Chip. If the parties cannot agree upon terms, the issues shall be resolved by arbitration under the rules of the American Arbitration Association but if the dispute involves the price for any asset, the arbitrator shall be a duly qualified ap-

praiser. Any mortgages, guarantees or other undertakings received by any defendant as security for the performance of the obligations of New Company shall not be utilized by any defendant to regain on a permanent basis the ownership of or control over New Company.

VI.

(A) Blue Chip is ordered and directed to issue a trading stamp and to promote a trading stamp service until the closing date; to cease issuing trading stamps on the closing date, and, within two years following the closing date, to terminate all of its trading stamp business. Thereafter, Blue Chip shall wind up its affairs expeditiously and be dissolved.

(B) Until the closing date Blue Chip and the consenting retailer defendants may continue the operation of Blue Chip, provided that Blue Chip is enjoined and restrained from:

1. Refusing to provide a trading stamp service or imposing any limitation on such service to any person because of: (i) the presence in the same locality of any establishment operated by another person using Blue Chip's stamp service; (ii) the rate of issue employed by such person in offering Blue Chip's for any other person's stamps; or (iii) the use by such person of any other trading stamp service;

2. Coercing or compelling any person: (i) to limit the rate of issue employed in offering Blue Chip's or any other person's stamps; or (ii) to refrain from using any other trading stamp service;

3. Using the name "Blue Chip" on any trading stamps issued by Blue Chip after March 1, 1968, or using the name

"Blue Chip" in any manner on any publication issued after June 1, 1968, to promote or merchandise trading stamp services, except for the purposes of redeeming Blue Chip stamps.

VII.

(A) New Company is enjoined and restrained:

1. From refusing to provide a trading stamp service or imposing any limitation on such service to any person because of: (i) the presence in the same locality of an establishment operated by another person using the company's stamp service; (ii) the rate of issue employed by such person in offering the company's or any other person's stamps; or (iii) the use by such person of any other trading stamp service;

2. From coercing or compelling any person (i) to limit the rate of issue employed in offering the company's or any other person's stamps; or (ii) to refrain from using any other trading stamp service;

3. From having as an officer or employee any person who, while holding such position, also serves as an officer, director, or employee of any person using trading stamp services; or from having, for a period of ten years following the closing date, as a director, any person who, while holding such position, also serves as an officer, director or employee of any person who was a Blue Chip stockholder in 1956 or 1957;

4. From using the name "Blue Chip," except for the purposes of redeeming Blue Chip stamps contemplated by Section V(A)2. hereof; or

5. From refusing to furnish quartely, to a user of its trading stamp service, upon request of such user, a balance sheet, a profit and loss statement (including the company's

redemption rate), and a condensed analysis of its investment portfolio.

(B) Each of the consenting retailer defendants is enjoined and restrained for a period of ten years following the closing date:

1. From having as an officer, director, or employee any person who, while holding such position, also serves as an officer, director, or employee of New Company; or

2. From exercising any right which it might acquire to vote for the election of any official of New Company; *provided* that a consenting retailer defendant may cause such right to be exercised by a financial institution or other independent third party who is acceptable to plaintiff or approved by the Court.

Each consenting retailer defendant shall be free to utilize or not utilize the trading stamp services of New Company and, except as provided in this Subsection VII(B), to exercise the same rights and privileges available to every other participant in, or user of the stamp services of, New Company.

VIII.

(A) Plaintiff may, at any time within three months following the date upon which New Company shall have submitted a report of its distribution of stamps to retail food stores during the final three months of the test period, apply to the court upon notice and hearing for the further relief set forth in Section VIII(B) below with respect to the northern market area or the southern market area. Upon the showing by plaintiff that, for the nine-month period concluding the test period, New Company distributed for use in retail food stores in the northern market area or the southern market area trading stamps which

convert to 30% or more of the retail food store sales in that market area, the court shall issue the further relief with respect to such market area unless New Company then shows that there was, during the test period, some period of 12 consecutive months in which the sum of the trading stamps distributed for use in retail food stores in such market area by Blue Chip (for such portion of the period, if any, as Blue Chip distributed stamps) and New Company (for such portion of the period, if any, as New Company distributed stamps) converts to less than 30% of the retail food store sales in such market area.

(B) If the court finds, upon proof in accordance with Subsection (A) above, that further relief is warranted with respect to a market area, the court shall designate a one-year period (hereinafter the "relief period") to commence within three months of such finding, and shall order the following relief:

1. During the said relief period, New Company shall be enjoined and restrained from distributing its trading stamps to a person for use in such person's retail food stores or retail drug stores in such market area without first obtaining a written statement: that the person shall not, during the relief period, issue New Company's stamps in any such store in such market area in an amount in excess of that store's maximum quota (as defined below); that the person shall maintain records sufficient to verify compliance with said quota limitation; and that the person shall permit plaintiff access to its records for the purpose of verification.

2. Beginning six months after the close of the said relief period New Company shall be enjoined and restrained, for a period of three years, from distributing its trading stamps for use in a particular retail food store or

retail drug store in such market area to any person to whom it distributed stamps for such use in such store during the relief period:

(a) Unless such person shall have furnished to New Company a statement from a Certified Public Accountant or a Public Accountant to the effect that the records of such person reflect that the issuance of New Company's stamps in such store in such market area during the relief period complied with the said maximum quota limitation; or

(b) Unless such person, upon application to the court (or to a master appointed by the court) filed within six months after the close of the said relief period with notice to New Company and plaintiff, shows that it has complied with the above maximum quota limitation in such store or that its failure to do so was a result of inadvertence, mistake or excusable neglect. During the pendency of any person's application hereunder, New Company may continue to distribute stamps to such person for use in such store.

In the case of a person operating two or more stores in a market area, the injunction provided for in this Subsection VIII(B)2. shall apply only to the distribution of stamps by New Company to such person for use in those stores in the market area with respect to which the requirements of Subsections (a) or (b) above have not been met.

3. New Company shall be further enjoined and restrained from the date the relief period begins until the close of the three-year period set forth in Subsection 2. above, from distributing its trading stamps to any person who, to the knowledge of New Company:

(a) Intentionally falsifies: (i) the data supplied to a Certified Public Accountant or a Public Accountant

for use in the preparation of a statement pursuant to Subsection VIII(B)2.(a) hereof; or (ii) any representation made to New Company to cause New Company to distribute trading stamps to it; or

(b) Refuses to supply, upon specific request of New Company, for computations by New Company hereunder, data showing the amount of New Company stamps such person acquired for use in retail food stores or retail drug stores in a market area for a particular period or periods; or refuses to afford upon specific request of plaintiff, access to records in accordance with the representation made pursuant to Subsection VIII(B)1. hereof; or

(c) Acquires New Company's stamps and transfers them to a former customer of New Company with whom New Company is enjoined from dealing; or

(d) Issues New Company's stamps: (i) during the relief period, intentionally in excess of maximum quota limitations pursuant to a plan or design to exceed such quota limitations; or (ii) beginning six months after the close of the relief period, intentionally in a store to which the maximum quota limitation applied and with respect to which the requirements of Subsection VIII(B)2.(a) or (b) have not been met.

4. Nothing contained in Subsections VIII(B)1. and 2. shall apply to any distribution of trading stamps by New Company: to a person for use for any purpose other than issuance by a retail drug or food store in a market area in which further relief is applied; or to a person who, during the said relief period, acquires not more than 1040 pads of trading stamps for use in retail food stores in such market area or not more than 312 pads of trading stamps for use in retail drug stores in such market area.

5. For the purposes of this Section VIII New Company shall be entitled to rely in good faith upon a person's representations as to the number of pads used or to be used by such person within or outside a market area or within or outside a particular store or stores.

(C) For purposes of this Section VIII the following terms shall have the following meanings:

1. The "northern market area" shall be the California counties north of the line formed by the northern boundaries of San Luis Obispo, Kern and San Bernardino Counties; and the "southern market area" shall be the remaining California counties.

2. "Retail food store sales" in a market area shall be the sum of the sales reported in the "Annual Survey of Buying Power, Sales Management, the Magazine of Marketing" as retail food store sales for each county in such market area adjusted in the following manner:

(a) From the data in the "Annual Survey" there shall be computed, as set forth below, an average month's sales for each relevant calendar year. An average month's sales for any calendar year for which data is reported in the "Annual Survey," shall be 1/12th of the total calendar year sales so reported. An average month's sales for the calendar year following the last calendar year for which data is available shall be computed by multiplying the average month's sales for the last reported year by a fraction whose numerator shall be the average month's sales for the last reported year and whose denominator shall be the average month's sales for the reported year preceding.

(b) The amount of retail food store sales during any relevant time period hereunder shall be the sum of: (1) the number of months within such relevant time period which fall within a single calendar year times the average month's sales for the said calendar year; and (2) the number of months within such time period which fall within any other calendar year times the average month's sales for such other calendar year.

3. The "conversion" of trading stamps to retail food store sales or of retail food store sales to trading stamps shall be at the rate of 5,000 stamps (comparable to the present smallest denomination Blue Chip stamp) or the equivalent thereof, to each $500 of sales; and a "pad" of stamps shall be 5,000 such trading stamps or the equivalent thereof.

4. The "maximum quota" of a store shall be the amount of trading stamps which converts to a percentage of the gross dollar sales volume of such store during the relief period, which percentage shall be computed and announced by New Company. The percentage shall be determined by the ratio, during the last year of the test period, of stamps which convert to 30% of retail food store sales in the market area to 95% of the stamps distributed by New Company for use in retail food stores in the market area to persons using more than 1040 pads in the market area in such stores; provided that, in no event shall the percentage be less than 65%; and provided further that New Company may, from time to time, announce an increase in the percentage after 10 days' notice to plaintiff:

(a) Whether or not plaintiff objects, so long as, during the relief period, 95% of the stamps distributed by New Company for use in retail food stores in a market area to persons using more than 1040 pads in the market area in such stores will convert to not more than 30% of the retail food store sales in such area; or

(b) If plaintiff does not object thereto within the said 10-day period, and such increase is based upon a good faith estimate by New Compay that 95% of the stamps to be distributed: (i) in the relief period or (ii) in any one year period beginning some time in the relief period, for use in retail food stores in a market

area to persons using more than 1040 pads in the market area in such stores will convert to not more than 30% of the retail food store sales in such area.

Any increase, once announced, shall not thereafter be reduced.

5. The measurement hereunder of any percentage for any 9-month or 12-month period shall be based upon the percentage for the entire said period and not the percentage for any particular month.

6. All retail food stores or all retail drug stores under common ownership or control of any person shall be deemed to be the retail food stores or retail drug stores of such person.

IX.

For the purpose of securing compliance with this Judgment and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any consenting defendant or New Company made to its principal office, and subject to any legally recognized privilege, be permitted:

1. Access during the office hours of any consenting defendant or New Company to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of any consenting defendant or New Company related to any matters contained in this Judgment;

2. Subject to the reasonable convenience of any consenting defendant or New Company and without restraint or interference from it, to interview officers or employees of

any consenting defendant or New Company who may have counsel present, regarding any such matters.

(B) Following the close of each fiscal quarter during the test period, Blue Chip and New Company shall each submit reports to the Department of Justice with respect to the quantity of stamps distributed by such company to its customers for use in retail food stores in the respective market areas defined in Section VIII. Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, any consenting defendant or New Company shall submit such additional reports in writing with respect to the matters contained in this Final Jugment, as may be requested. Provided that no information obtained by the means provided for in this entire Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for construction, carrying out, modification, termination or enforcement of or compliance with the provisions of this Final Judgment and for the punishment of violations thereof.

Dated: ....., 1966.

United States District Judge

Appendix E

Sections 1, 2 and 4 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, 2, 4, provide in pertinent part:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy declared * * * to be illegal shall be deemed guilty of a misdemeanor * * *.
>
> SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * *.
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> SEC. 4. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1-7 of this title; * * *.

Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29, provides as follows:

> In every civil action brought in any district court of the United States under any of said Acts, wherein the United States is complainant, an appeal from the final judgment of the district court will lie only to the Supreme Court.

Rule 24 of the Federal Rules of Civil Procedure, 28 U.S.C. App. following § 2718, provides as follows:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional

right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 59(e) of the Federal Rules of Civil Procedure 28 U.S.C. App. following § 2718 provides:

> "(e) *Motion to Alter or Amend a Judgment.* A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment. Added Dec. 27, 1946, eff. March 19, 1948."